

MEMORANDUM

DATE: February 13, 2007

TO: Ms. Sharon L. Summers, DMMA
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 10 DE Reg. 1220 [DMMA Final Institutionalized Spouse Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) final Institutionalized Spouse regulation published as 10 DE Reg. 1220 in the February 1, 2007 issue of the Register of Regulations. As you know, in April 2006, DMMA adopted regulations adding illustrations to institutionalized spouse standards. Although comments were not solicited, the SCPD objected to characterizing any spouse receiving HCBS as an "institutionalized spouse" which would remove spousal impoverishment protections. CMS then influenced DMMA to agree to delete the illustrations. DMMA then issued new regulations omitting the illustrations. However, the regulatory text still eliminated spousal impoverishment protections if a community spouse were receiving HCBS. CMS then confirmed that it had advised DMMA of its concurrence with the Council's interpretation. DMMA has now published a conforming proposed regulation.

SCPD endorses the final regulation since it now allows a non-institutionalized spouse participating in an HCBS waiver to benefit from spousal impoverishment protections.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position on the proposed regulation.

cc: Mr. Harry Hill
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

